

IN THE SUPREME COURT OF INDIA

SUBJECT : WINDING UP

NO.: Appeal (civil) 1661 of 2008

DATE OF JUDGMENT: 28/02/2008

Vijay Kumar Karwa

PETITIONER

VERSUS

:

Official Liquidator, Rohtas Inds. Ltd

RESPONDENT

BENCH:

Dr. ARIJIT PASAYAT & C.K. THAKKER & LOKESHWAR SINGH PANTA

JUDGMENT:

CIVIL APPEAL NO 1661 OF 2008

(Arising out of S.L.P. (C) No.10587 of 2007)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the order passed by a Division Bench of the Patna High Court summarily dismissing the Company Appeal No.4 of 2006 filed by the appellant under Section 483 of the Companies Act, 1956 (in short 'the Act').
3. Background facts in a nutshell are as follows: Company case no.3 of 1984 was filed before the Patna High Court in respect of Rohtas Industries Ltd. (hereinafter referred to as the 'company') which purportedly had become sick. It is the case of the appellant that though efforts were made to revive, it could not materialized. Eventually the High Court started the process of disposal of the assets of the company. Appellant claiming to be representative of Bangar Group of Industries, Calcutta, filed an application in the said case. After giving particulars of the group which had annual turnover of about Rs.5,000 crores, it was mentioned in the application that the appellant was interested in the revival of the company. It was also mentioned that the appellant had so decided because of the change of political conditions of the State and there was scope for industrial growth. The appellant offered to pay Rs.65.51 crores as consideration money for purchase of assets of the company in liquidation and proposed to invest Rs.650 crores

for revival of the industry. Steps were taken at various stages by the Government and the functionaries of the government on the application of appellant. Official Liquidator was asked to file reply to the prayers made in the application by the appellant. Official Liquidator filed his response on 19.6.2006. On 25.8.2006 the matter was heard by the High Court which directed for issuance of sale notice for assets of the company. IA filed by the appellant was disposed of. The appellant's grievance is that the same was disposed of without giving any reason or even without considering the desirability of the revival. Reference was made to the response of the Official Liquidator who had stated further information may be called for from the appellant. Aggrieved by the said order, the appellant filed an appeal under Section 483 of the Act before the Division Bench on 11.1.2007. The Company Judge proceeded with the matter and directed sale of the assets of the company in favour of the Indian Railways who had made offer of Rs.140 crores. On 12.3.2007, IA was filed by the appellant giving details of his proposal. By the impugned order the Division Bench dismissed the appeal. Though various grounds have been urged in support of the appeal, the primary ground of challenge is that such summary disposal is indefensible particularly when the appeal is a statutory appeal.

4. Learned counsel for the respondents, however, submitted that there was no merit in the appeal as the learned Company Judge had discussed with the matter in great detail. It was also submitted that the Indian Railways have already invested huge amounts of money.

5. Section 483 of the Act reads as follows: "483. Appeals from orders. Appeals from any order made, or decision given before the commencement of the Companies (Second Amendment) Act, 2002, in the matter of the winding up of a company by the Court shall lie to the same Court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction."

6. In *Shanta Genevieve Pommerat and another v. Sakal Papers Pvt. Ltd. And Ors.* (AIR 1983 SC 269) it was observed by this Court that the High Court is bound to entertain the appeal against the order of the learned Single Judge who disposed of it on merit and not summarily or in limine. The position was reiterated in *Smt. Arati Dutta v. M/s. Eastern Tea Estates (P) Ltd.* (AIR 1988 SC 325).

7. It may be noted that every order which may reasonably be considered to be a judicial order as distinct from merely administrative order is appealable in terms of Section 483 of the Act.

8. Above being the position, we set aside the impugned order of the High Court and remit the matter to it for fresh disposal in accordance with law. Considering the factual scenario as highlighted by the parties, we request the High Court to dispose of the appeal by the end of August, 2008. The order of status quo dated 31.8.2007 passed by this Court shall be operative till the disposal of the appeal. It is made clear that by giving interim protection, we have not expressed any opinion on the merits of the case.